

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN SENATE MAY 30, 2012

AMENDED IN SENATE APRIL 25, 2012

**SENATE BILL**

**No. 1425**

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**Introduced by Senator Negrete McLeod**

February 24, 2012

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An act to amend Section 388 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as amended, Negrete McLeod. Juveniles: dependent children.

Existing law provides that after a child is declared a dependent child of the court, any parent or other person having an interest in the child, including the dependent child, may petition the court to change, modify, or set aside an order in the dependency proceedings or to terminate the court's jurisdiction. Existing law further permits any party, including the dependent child, to petition the court to terminate reunification services before the dependency review hearing. A court may terminate reunification services under this provision only after finding by a preponderance of the evidence that reasonable services have been offered and after finding by clear and convincing evidence either that a change in circumstances justifies termination of reunification services or that the parent's action or inaction makes reunification unlikely.

This bill would require a court to order a hearing on a proposed modification of reunification services, custody, or visitation orders concerning a child for whom reunification services were not ordered if

the court finds that the best interests of the child would be met by the proposed change. Additionally, this bill would require a court to modify an order finding that reunification services were not necessary ~~only if when a party has petitioned the court prior to the issuance of an order terminating parental rights only if~~ the court finds, by clear and convincing evidence, that the proposed change is in the child's best interests. The bill would apply the same ~~standards~~ requirements to petitions to modify an order relating to custody or visitation of the dependent child.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 388 of the Welfare and Institutions Code  
2     is amended to read:  
3     388. (a) (1) Any parent or other person having an interest in  
4     a child who is a dependent child of the juvenile court or the child  
5     himself or herself through a properly appointed guardian may,  
6     upon grounds of change of circumstance or new evidence, petition  
7     the court in the same action in which the child was found to be a  
8     dependent child of the juvenile court or in which a guardianship  
9     was ordered pursuant to Section 360 for a hearing to change,  
10    modify, or set aside any order of court previously made or to  
11    terminate the jurisdiction of the court. The petition shall be verified  
12    and, if made by a person other than the child, shall state the  
13    petitioner's relationship to or interest in the child and shall set forth  
14    in concise language any change of circumstance or new evidence  
15    that is alleged to require the change of order or termination of  
16    jurisdiction.  
17    (2) When any party, including a child who is a dependent of the  
18    juvenile court, petitions the court, ~~prior to the hearing set pursuant~~  
19    ~~to Section 366.26 or~~ court prior to an order terminating parental  
20    rights, to modify the order that reunification services were not  
21    needed pursuant to paragraphs (4), (5), and (6) of subdivision (b)  
22    of Section 361.5, or to modify any orders related to custody or  
23    visitation of the subject child, and the court orders a hearing  
24    pursuant to subdivision (d), the court shall modify the order that

1 reunification services were not needed pursuant to paragraphs (4),  
2 (5), and (6) of subdivision (b) of Section 361.5, or any orders  
3 related to the custody or visitation of the child for whom  
4 reunification services were not ordered pursuant to paragraphs (4),  
5 (5), and (6) of subdivision (b) of Section 361.5, only if the court  
6 finds by clear and convincing evidence that the proposed change  
7 is in the best interests of the child.

8 (b) Any person, including a child who is a dependent of the  
9 juvenile court, may petition the court to assert a relationship as a  
10 sibling related by blood, adoption, or affinity through a common  
11 legal or biological parent to a child who is, or is the subject of a  
12 petition for adjudication as, a dependent of the juvenile court, and  
13 may request visitation with the dependent child, placement with  
14 or near the dependent child, or consideration when determining  
15 or implementing a case plan or permanent plan for the dependent  
16 child or make any other request for an order which may be shown  
17 to be in the best interest of the dependent child. The court may  
18 appoint a guardian ad litem to file the petition for the dependent  
19 child asserting the sibling relationship if the court determines that  
20 the appointment is necessary for the best interests of the dependent  
21 child. The petition shall be verified and shall set forth the  
22 following:

23 (1) Through which parent he or she is related to the dependent  
24 child.

25 (2) Whether he or she is related to the dependent child by blood,  
26 adoption, or affinity.

27 (3) The request or order that the petitioner is seeking.

28 (4) Why that request or order is in the best interest of the  
29 dependent child.

30 (c) (1) Any party, including a child who is a dependent of the  
31 juvenile court, may petition the court, prior to the hearing set  
32 pursuant to subdivision (f) of Section 366.21 for a child described  
33 by subparagraph (A) of paragraph (1) of subdivision (a) of Section  
34 361.5, or prior to the hearing set pursuant to subdivision (e) of  
35 Section 366.21 for a child described by subparagraph (B) or (C)  
36 of paragraph (1) of subdivision (a) of Section 361.5, to terminate  
37 court-ordered reunification services provided under subdivision  
38 (a) of Section 361.5 only if one of the following conditions exists:

39 (A) It appears that a change of circumstance or new evidence  
40 exists that satisfies a condition set forth in subdivision (b) or (e)

1 of Section 361.5 justifying termination of court-ordered  
2 reunification services.

3 (B) The action or inaction of the parent or guardian creates a  
4 substantial likelihood that reunification will not occur, including,  
5 but not limited to, the parent or guardian's failure to visit the child,  
6 or the failure of the parent or guardian to participate regularly and  
7 make substantive progress in a court-ordered treatment plan.

8 (2) In determining whether the parent or guardian has failed to  
9 visit the child or participate regularly or make progress in the  
10 treatment plan, the court shall consider factors including, but not  
11 limited to, the parent or guardian's incarceration,  
12 institutionalization, or participation in a court-ordered residential  
13 substance abuse treatment program.

14 (3) The court shall terminate reunification services during the  
15 above-described time periods only upon a finding by a  
16 preponderance of evidence that reasonable services have been  
17 offered or provided, and upon a finding of clear and convincing  
18 evidence that one of the conditions in subparagraph (A) or (B) of  
19 paragraph (1) exists.

20 (4) If the court terminates reunification services, it shall order  
21 that a hearing pursuant to Section 366.26 be held within 120 days.

22 (d) If it appears that the best interests of the child may be  
23 promoted by the proposed change of order, modification of  
24 reunification services, custody, or visitation orders concerning a  
25 child for whom reunification services were not ordered pursuant  
26 to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5,  
27 recognition of a sibling relationship, termination of jurisdiction,  
28 or clear and convincing evidence supports revocation or termination  
29 of court-ordered reunification services, the court shall order that  
30 a hearing be held and shall give prior notice, or cause prior notice  
31 to be given, to the persons and by the means prescribed by Section  
32 386, and, in those instances in which the means of giving notice  
33 is not prescribed by those sections, then by means the court  
34 prescribes.

35 (e) (1) On and after January 1, 2012, a nonminor who attained  
36 18 years of age while subject to an order for foster care placement  
37 and, commencing January 1, 2012, who has not attained 19 years  
38 of age, or, commencing January 1, 2013, 20 years of age, or,  
39 commencing January 1, 2014, 21 years of age, for whom the court  
40 has dismissed dependency jurisdiction pursuant to Section 391, or

1 delinquency jurisdiction pursuant to Section 607.2 or transition  
2 jurisdiction pursuant to Section 452, but has retained general  
3 jurisdiction under subdivision (b) of Section 303, or the county  
4 child welfare services, probation department, or tribal placing  
5 agency on behalf of the nonminor, may petition the court in the  
6 same action in which the child was found to be a dependent or  
7 delinquent child of the juvenile court, for a hearing to resume the  
8 dependency jurisdiction over a former dependent or to assume or  
9 resume transition jurisdiction over a former delinquent ward  
10 pursuant to Section 450. The petition shall be filed within the  
11 period that the nonminor is of the age described in this paragraph.  
12 If the nonminor has completed the voluntary reentry agreement,  
13 as described in subdivision (z) of Section 11400, with the placing  
14 agency, the agency shall file the petition on behalf of the nonminor  
15 within 15 judicial days of the date the agreement was signed unless  
16 the nonminor elects to file the petition at an earlier date.

17 (2) (A) The petition to resume jurisdiction may be filed in the  
18 juvenile court that retains general jurisdiction under subdivision  
19 (b) of Section 303, or the petition may be submitted to the juvenile  
20 court in the county where the youth resides and forwarded to the  
21 juvenile court that retained general jurisdiction and filed with that  
22 court. The juvenile court having general jurisdiction under Section  
23 303 shall receive the petition from the court where the petition  
24 was submitted within five court days of its submission, if the  
25 petition is filed in the county of residence. The juvenile court that  
26 retained general jurisdiction shall order that a hearing be held  
27 within 15 judicial days of the date the petition was filed if there is  
28 a prima facie showing that the nonminor satisfies the following  
29 criteria:

30 (i) He or she was previously under juvenile court jurisdiction,  
31 subject to an order for foster care placement when he or she  
32 attained 18 years of age, and has not attained the age limits  
33 described in paragraph (1).

34 (ii) He or she intends to satisfy at least one of the conditions set  
35 forth in paragraphs (1) to (5), inclusive, of subdivision (b) of  
36 Section 11403.

37 (iii) He or she wants assistance either in maintaining or securing  
38 appropriate supervised placement, or is in need of immediate  
39 placement and agrees to supervised placement pursuant to the

1 voluntary reentry agreement as described in subdivision (z) of  
2 Section 11400.

3 (B) Upon ordering a hearing, the court shall give prior notice,  
4 or cause prior notice to be given, to the persons and by the means  
5 prescribed by Section 386, except that notice to parents or former  
6 guardians shall not be provided unless the nonminor requests, in  
7 writing on the face of the petition, notice to the parents or former  
8 guardians.

9 (3) The Judicial Council, by January 1, 2012, shall adopt rules  
10 of court to allow for telephonic appearances by nonminor former  
11 dependents or delinquents in these proceedings, and for telephonic  
12 appearances by nonminor dependents in any proceeding in which  
13 the nonminor dependent is a party, and he or she declines to appear  
14 and elects a telephonic appearance.

15 (4) Prior to the hearing on a petition to resume dependency  
16 jurisdiction or to assume or resume transition jurisdiction, the court  
17 shall order the county child welfare or probation department or  
18 Indian tribe that has entered into an agreement pursuant to Section  
19 10553.1 to prepare a report for the court addressing whether the  
20 nonminor intends to satisfy at least one of the criteria set forth in  
21 subdivision (b) of Section 11403. When the recommendation is  
22 for the nonminor dependent to be placed in a setting where minor  
23 dependents also reside, the results of a background check of the  
24 petitioning nonminor conducted pursuant to Section 16504.5, used  
25 by the placing agency to determine appropriate placement options  
26 for the nonminor. The existence of a criminal conviction is not a  
27 bar to eligibility for reentry or resumption of dependency  
28 jurisdiction or the assumption or resumption of transition  
29 jurisdiction over a nonminor.

30 (5) (A) The court shall resume dependency jurisdiction over a  
31 former dependent or assume or resume transition jurisdiction over  
32 a former delinquent ward pursuant to Section 450, and order that  
33 the nonminor's placement and care be under the responsibility of  
34 the county child welfare services department, the probation  
35 department, or tribe, if the court finds all of the following:

36 (i) The nonminor was previously under juvenile court  
37 jurisdiction subject to an order for foster care placement when he  
38 or she attained 18 years of age.

39 (ii) The nonminor has not attained the age limits described in  
40 paragraph (1).

1 (iii) Reentry and remaining in foster care are in the nonminor's  
2 best interests.

3 (iv) The nonminor intends to satisfy, and agrees to satisfy, at  
4 least one of the criteria set forth in paragraphs (1) to (5), inclusive,  
5 of subdivision (b) of Section 11403, or demonstrates his or her  
6 agreement to satisfy the criteria by signing the voluntary reentry  
7 agreement as described in subdivision (z) of Section 11400.

8 (B) The agency made responsible for the nonminor's placement  
9 and care pursuant to subparagraph (A) shall prepare a new  
10 transitional independent living case plan and submit it to the court  
11 within 60 days of the resumption of dependency jurisdiction or  
12 assumption or resumption of transition jurisdiction.

13 (C) In no event shall the court grant a continuance that would  
14 cause the hearing to resume dependency jurisdiction or to assume  
15 or resume transition jurisdiction to be completed more than 120  
16 days after the date the petition was submitted.

17 SEC. 2. This act is an urgency statute necessary for the  
18 immediate preservation of the public peace, health, or safety within  
19 the meaning of Article IV of the Constitution and shall go into  
20 immediate effect. The facts constituting the necessity are:

21 In order to ensure that parents of children who are in dependency  
22 proceedings due to a parent's sexual abuse or severe physical harm  
23 to that child or siblings of that child are only given reunification  
24 services in modification proceedings in limited circumstances, it  
25 is necessary for this act to take effect immediately.